

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

1633 BROADWAY MARS RESTAURANT
CORP.,

Debtor.

Case No. 08-CV-04543 (TPG)

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS DOCKETED APPEAL WITHOUT PREJUDICE**

Appellant Paramount Group, Inc., as agent for PGREF I, 1633 Broadway Tower L.P. ("Paramount"), by and through its undersigned counsel, hereby seeks dismissal of its appeal, pursuant to Federal Rule of Bankruptcy Procedure 8001(c)(2), from the February 7, 2008 order of the Bankruptcy Court for the Southern District of New York denying, *inter alia*, Paramount's motion for relief from the automatic stay, which was docketed with this Court on May 16, 2008.

By order dated February 7, 2008, the Bankruptcy Court for the Southern District of New York denied, *inter alia*, Paramount's motion for relief from the automatic stay (the "Bankruptcy Court Order"). Paramount filed a Notice of Appeal of the Bankruptcy Court Order on February 15, 2008. *See* Exhibit A of the accompanying Declaration of Constantine D. Pourakis (the "Pourakis Decl.").

The appeal was docketed with this Court on May 16, 2008. *See* Pourakis Decl. Exhibit B (copy of the Civil Cover Sheet transmitted by this Court to the Bankruptcy Court evidencing the docketing of the appeal).

Federal Rule of Bankruptcy Procedure 8001(c)(2) provides:

If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate

panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

Fed. R. Bankr. P. 8001(c)(2).

By this Motion, Paramount respectfully seeks the dismissal of its appeal of the Bankruptcy Court Order without prejudice, and with costs to be borne by the respective parties. Since Paramount is the only party thus far to bear any costs concerning the instant appeal, Paramount believes that the relief sought is reasonable.

WHEREFORE, Appellant Paramount Group, Inc., as agent for PGREF I, 1633 Broadway Tower L.P. respectfully requests that the Court grant Paramount's motion to dismiss the instant appeal without prejudice and with costs to be borne by the respective parties.

Dated: New York, New York
June 2, 2008

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

1633 BROADWAY MARS RESTAURANT
CORP.,

Debtor.

Case No. 08-CV-04543 (TPG)

ORDER DISMISSING DOCKETED APPEAL WITHOUT PREJUDICE

Upon the Motion of Appellant Paramount Group, Inc., as agent for PGREF I, 1633 Broadway Tower L.P. ("Paramount") for the dismissal of its appeal, pursuant to Federal Rule of Bankruptcy Procedure 8001(c)(2), from the February 7, 2008 order of the Bankruptcy Court for the Southern District of New York denying, *inter alia*, Paramount's motion for relief from the automatic stay, which was docketed with this Court on May 16, 2008; and the Court having determined the relief sought is proper;

IT IS HEREBY ORDERED AND ADJUDGED:

1. Pursuant to Federal Rule of Bankruptcy Procedure 8001(c)(2), Paramount's appeal of the February 7, 2008 order of the Bankruptcy Court for the Southern District of New York denying, *inter alia*, Paramount's motion for relief from the automatic stay, docketed with this Court on May 16, 2008, is dismissed without prejudice.

2. Costs of the instant appeal are to be borne by the respective parties.

SO ORDERED, this ___ day of June, 2008

Thomas P. Griesa
United States District Judge